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09/453,480	12/09/1999	ROGER G. M. LUCASSEN	RANPP0305USA	2696
23908	7590	09/30/2004	EXAMINER	
RENNER OTTO BOISSELLE & SKLAR, LLP 1621 EUCLID AVENUE NINETEENTH FLOOR CLEVELAND, OH 44115			KIM, EUGENE LEE	
		ART UNIT	PAPER NUMBER	
			3721	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/453,480
Filing Date: December 09, 1999
Appellant(s): LUCASSEN ET AL.

MAILED
SEP 30 2004
GROUP 3700

Christopher Jacobs
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/20/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 4, 6, 7, 11, 13-15 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5943844	Wilhelm et al	08-1999
5213867	Huston, Sr et al	05-1993

5,569,146 Simmons 10-1996

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 4-7, 1 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons in view of Huston et al or Wilhelm et al. Simmons shows a moving blade with a shutter means that moves with blade 72 to block the strip path in an extended position. The second blade is read on element 70. Simmons shows shutter means 73 in figure 5B2 that prevents movement of a cut end from moving behind moving blade 72 since the cut end is under moving blade 72 as shown in figure 5B2. Simmons substantially shows the claimed subject matter but do not show the shutter means being flush with the blade as claimed. Huston et al show a cutting blade 40 mounted on a holder means with the shutter means on the side of the blade. Wilhelm et al show a cutting blade 64 wherein the whole surface is being used to substantially block a path as claimed. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Simmons with cutting means as taught by Huston et al or Wilhelm to make sure nothing interferes with the cutting blade. Regarding the shutter surface being flush with the blade, Huston et al show a mechanical equivalent blade wherein the strip path is substantially blocked as claimed. Wilhelm et al show a blade means 64 wherein the surface of the blade blocks a strip path and the surface is flush. Wilhelm et al do not show a shutter means that is separate from the blade means; however, it has been held that the mere fact that a given structure is integral does not preclude its consisting of various elements. See *Nerwin v. Erlichman*, 168 USPQ

177,179 (PTO Bd. Of Int. 1969). Furthermore, the blade means of Wilhelm et al performs the same function as applicant's blade and shutter and an integral workpiece is more efficient than having two separate workpieces as claimed.

(11) Response to Argument

In response to applicants argument regarding the shutter mechanism, the examiner first notes that the claimed language recites that the blade is "substantially blocking the strip path: and that the shutter has an upstream surface flush with the moving blade. "Substantially" as claimed is given a broad interpretation by the examiner. Simmons blade 72 is substantially blocking the strip path as shown in fig 5B2. Simmons merely is lacking the limitation of the blade having a surface flush with the shutter as claimed. Wilhelm clearly shows this limitation as discussed supra and as shown in figures 6 and 7.

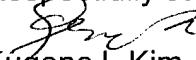
Applicant is arguing functional language regarding the function of the blade "substantially blocking the strip path". The examiner notes that an apparatus must be distinguished from the prior art in terms of structure rather than function. In this case, the only structure is the limitation of the blade having a surface flush with the shutter as claimed. As discussed supra, Wilhelm shows this limitation.

Applicant is arguing that the secondary references would not be obvious to combine since the problems being solved are not the same. The cutting instruments of both secondary references are cutting through the workpiece entirely and the cutting means are being used to combine with Simmons to show that the concept of cutting through a workpiece entirely to block the path is within the realm of one of ordinary skill

in the art. The fact that the blade is flush with the shutter is immaterial. The criticality is merely in the shearing action of the cutting instrument. The examiner notes that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Eugene L Kim
Primary Examiner
Art Unit 3721

September 27, 2004

Conferees

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